

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Mac Muir	Team: Squad #2	CCRB Case #: 201606197	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Monday, 07/11/2016 12:40 PM	Location of Incident: § 87(2)(b)	Precinct: 100	18 Mo. SOL 1/11/2018	EO SOL 1/11/2018	
Date/Time CV Reported Mon, 07/11/2016 2:21 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 07/18/2016 10:55 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Charles Volante	14858	956322	100 PCT
2. POF Valerie Shepherd	9602	956258	100 PCT
3. An officer			100 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Alexis Chavez	09744	953744	100 PCT
2. SGT Tiersa Diaz	00941	928020	100 PCT
3. POM Li Wang	29939	933465	100 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Charles Volante	Abuse: Police Officer Charles Volante entered § 87(2)(b) in Queens.	§ 87(2)(b)
B.POF Valerie Shepherd	Abuse: Police Officer Valerie Shepherd entered § 87(2)(b) in Queens.	§ 87(2)(b)
C.POM Charles Volante	Force: Inside of § 87(2)(b) in Queens, Police Officer Charles Volante used physical force against § 87(2)(b)	§ 87(2)(b)
D.POM Charles Volante	Force: Outside of § 87(2)(b) in Queens, Police Officer Charles Volante used physical force against § 87(2)(b)	§ 87(2)(b)
E.POF Valerie Shepherd	Force: Outside of § 87(2)(b) in Queens, Police Officer Valerie Shepherd used physical force against § 87(2)(b)	§ 87(2)(b)
F.POF Valerie Shepherd	Force: Outside of § 87(2)(b) in Queens, Police Officer Valerie Shepherd used physical force against § 87(2)(b)	§ 87(2)(b)
G.POM Charles Volante	Force: Outside of § 87(2)(b) in Queens, Police Officer Charles Volante used physical force against § 87(2)(b)	§ 87(2)(b)
H. An officer	Force: Outside of § 87(2)(b) in Queens, an officer struck § 87(2)(b) with a radio.	§ 87(2)(b)

Officer(s)	Allegation	Investigator Recommendation
I.POM Charles Volante	Abuse: Outside of § 87(2)(b) in Queens, Police Officer Charles Volante refused to provide his name to § 87(2)(b)	
J.POF Valerie Shepherd	Abuse: Outside of § 87(2)(b) in Queens, Police Officer Valerie Shepherd refused to provide her name to § 87(2)(b)	

### Case Summary

On July 11, 2016, the following complaint was reported to Internal Affairs. It was referred to the CCRB on June 18, 2016. It is being closed over 90 days after it was received due to the fact that § 87(2)(b) was incarcerated at the time of his interview, which took nearly a month to schedule, and the fact that both of the two subject officers' interviews were missed or postponed on three separate occasions before their interviews were finally conducted.

At approximately 4:45 a.m. on July 11, 2016, § 87(2)(b) struck his uncle, § 87(2)(b) at their residence, § 87(2)(b) in Queens; a two-story single-family house. § 87(2)(b) owned the home and § 87(2)(b) had stayed in the basement for the previous month. § 87(2)(b) § 87(2)(b) called 911, but when officers responded, § 87(2)(b) was no longer at the home. A Criminal Complaint Report and a Domestic Incident Report were generated (Board Review 01). At 12:00 p.m. on July 11, 2016, Police Officers Valerie Shepherd and Charles Volante of the 100<sup>th</sup> Precinct met with § 87(2)(b) at the Transit District 23 stationhouse. He notified them that § 87(2)(b) was in the basement of his home. The officers drove § 87(2)(b) to § 87(2)(b) and he provided them with consent to enter.

At approximately 12:40 p.m., § 87(2)(b) heard what he believed to be the sounds of someone attempting to open his door. As he walked toward the door, it allegedly swung open and Police Officers Shepherd and Volante entered (**Allegations A and B**). Police Officer Volante allegedly punched § 87(2)(b) in the face shortly after entering the room, causing § 87(2)(b) to fall to the ground (**Allegation C**). The officers brought § 87(2)(b) out of the house and into the driveway, where Police Officer Volante threw him to the ground and both officers allegedly dragged § 87(2)(b) back and forth on the ground (**Allegations D and E**). Police Officer Shepherd allegedly repeatedly kicked § 87(2)(b) in the sides, both officers allegedly repeatedly punched § 87(2)(b) in the head, and one of them, § 87(2)(b) could not tell which, allegedly struck him in the back of the head with what he believed to be a radio (**Allegations F, G, and H**). During the struggle, § 87(2)(b) requested Police Officers Volante and Shepherds' names and they allegedly never provided them to him (**Allegations I and J**).

§ 87(2)(b) was handcuffed and arrested. § 87(2)(b) was charged with § 87(2)(b) (Board Review 02). He was transported to § 87(2)(b), and ultimately to Rikers Island.

No video footage was found for this case.

### Mediation, Civil and Criminal Histories

- This complaint was unsuitable for mediation because of the arrest and subsequent incarceration of § 87(2)(b)
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[REDACTED]  
[REDACTED]  
[REDACTED]
- As per the New York City Comptroller's Officer, no Notice of Claim has been filed in regards to this incident as of October 21, 2016.

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

### **Civilian and Officer CCRB Histories**

- This is the first CCRB case involving § 87(2)(b) (Board Review 04).
- Police Officer Volante has been a member of the NYPD for two years and has had no previous CCRB allegations. § 87(4-b) § 87(2)(g)
- Police Officer Shepherd has been a member of the NYPD for two years and has had one previous CCRB allegation and no substantiated allegations § 87(2)(g)

### **Potential Issues**

- The investigation identified a surveillance camera pointed directly toward the incident location on a neighboring building. The owner of the camera, § 87(2)(b) stated that the camera was inoperable and had not worked since Hurricane Sandy.
- The investigation identified a neighbor who witnessed the incident as a man who lived across the street. When investigators spoke to him and his wife at their home, they both refused to provide their identities or statements to the CCRB. The man stated that § 87(2)(b) and his family were “bad people,” and that § 87(2)(b) “deserved what happened to him.” He refused to elaborate on that statement.

### **Findings and Recommendations**

#### **Explanation of Subject Officer Identification**

- Both officers acknowledged their participation in this incident. Police Officer Shepherd is a black female and Police Officer Volante is a white male. § 87(2)(g)
- there is no dispute as to which action was attributed to which officer, except for the allegation that an officer struck § 87(2)(b) with a radio. § 87(2)(b) was not sure which officer struck him with a radio and both officers denied striking § 87(2)(b) with a radio. § 87(2)(g)

#### **Allegations not pleaded**

- **Discourtesy:** After being treated at the hospital, § 87(2)(b) was taken to central booking, where he overheard an unidentified officer tell another officer that § 87(2)(b) was “too fucked up to see anyone.” At that point § 87(2)(b) was sent back to the hospital for further treatment. § 87(2)(g)

**Allegation A – Abuse of Authority – Police Officer Charles Volante entered § 87(2)(b) in Queens.**

**Allegation B – Abuse of Authority – Police Officer Valerie Shepherd § 87(2)(b) in Queens.**

This complaint was referred by IAB to the CCRB on July 18, 2016. § 87(2)(b) was interviewed via video teleconference on August 8, 2016. § 87(2)(b) provided a telephone statement on August 10, 2016 (Board Review 05). § 87(2)(b) provided a telephone statement on August 10, 2016 (Board Review 06).

Police Officer Li Wang was interviewed at the CCRB on September 30, 2016. Police Officers Jared Somers and Charles Volante were interviewed at the CCRB on October 4, 2016. Police Officer Valerie Shepherd was interviewed at the CCRB on October 5, 2016.

The general contours of what happened after the officers arrived with § 87(2)(b) are not in dispute. It is undisputed that shortly thereafter, officers engaged § 87(2)(b) inside the entryway to his door and then pulled him out of the basement into the driveway. § 87(2)(b) was wearing only shorts and sandals at this time.

§ 87(2)(b) alleged that while inside the basement, after he heard a knock on the door, an officer kicked in the door to his basement apartment. Police Officer Volante walked down the stairs and punched him in the face four times. The officers then dragged him up the stairs and out of the basement.

§ 87(2)(b) stated that he spoke with Police Officers Shepherd and Volante at a subway station and informed them that § 87(2)(b) had hit him. He provided the officers with permission to enter his home. He then entered another part of the home and did not observe the officers' interactions with his nephew.

Police Officer Shepherd stated that about a minute after § 87(2)(b) knocked on the basement door for them, § 87(2)(b) walked out of the doorway, saw the officers, and ran back inside. The officers were able to hold open the door before § 87(2)(b) closed it, and entered the home as § 87(2)(b) backed inside. The officers grabbed each of § 87(2)(b)'s arms, which he flailed wildly, causing them to come near the officers' faces. Police Officer Shepherd stated that Police Officer Volante punched § 87(2)(b) in the face one time. Both officers then pulled § 87(2)(b) out of the basement.

Police Officer Volante's statement § 87(2)(g) the alleged punch to § 87(2)(b)'s face inside the basement, which he stated he could not recall. § 87(2)(g)

§ 87(2)(b) He stated that when the officers were in the stairwell to the basement, they had a "back-and-forth" with § 87(2)(b) He believed that the officers were in a "dangerous situation" and needed to get § 87(2)(b) out of the basement. He was asked specifically how the officers got § 87(2)(b) out of the basement and stated that he was "not really too sure" and that the officers "got leverage" by some means he could not recall. He repeatedly reiterated that he was not sure how the officers removed § 87(2)(b) from the

basement. On four separate occasions he was asked whether he punched § 87(2)(b) while inside of the house, and each time he replied differently. He interchangeably replied that he “wasn’t sure,” that it was “entirely possible,” that he used the “least amount of force necessary,” that he was “not really sure,” but that he needed to “gain some leverage,” and “maybe the force of me and my partner combined was too much for him - just the laws of physics.” He later stated that the officers “wrestled” § 87(2)(b) up the stairs and out of the basement.

According to New York State Penal Law §145.05(2), a person is guilty of criminal mischief in the third degree when, with intent to damage the property of another person, and having no right to do so nor any reasonable ground to believe that he or she had such right, he or she damages property of another person in an amount exceeding two hundred fifty dollars.

§ 87(2)(g)  
[REDACTED]

**Allegation C – Force – Inside of § 87(2)(b) in Queens, Police Officer Charles Volante used physical force against § 87(2)(b)**

§ 87(2)(g)  
[REDACTED]

As previously discussed, Police Officer Volante neither affirmed nor denied that he punched § 87(2)(b) in the face. He was asked four separate times whether he punched § 87(2)(b) and was unable to provide an answer. He refused to provide any description more descriptive than that the officers “got leverage” or that they “somehow managed to get up the stairs.” § 87(2)(g)

§ 87(2)(b)'s medical records indicate that he had bruises and scrapes along the left side of his body. § 87(2)(b) described this injury as consistent with “assault by unarmed brawl or fight.” Most notably, § 87(2)(b) sustained a hematoma to the left side of his face and a contusion to the right temporal area. A preliminary CT scan was conducted and the doctors concluded that § 87(2)(b) may have sustained a facial fracture. A follow-up CT scan revealed that § 87(2)(b) did not sustain an acute facial fracture. § 87(2)(b) informed medical staff that he had used heroin on the day of the incident. A toxicology analysis was performed on § 87(2)(b) and § 87(2)(b) tested positive for “Benzos” “Cocaine” and “Opiates” (Privileged Documents).

There was no mention of injury to the back of § 87(2)(b)'s head, and there is no indication of § 87(2)(b) complaining to any medical professional of any injury to the back of his head.

Photographs of § 87(2)(b) were taken by Police Officer Shepherd on the day of the incident (Board Review 07). They depict abrasions on the left side of his forehead, above his left eyebrow, and on his right cheek, right forearm, left shoulder, left knee, left calve, left foot, and right foot. They do not appear to show any bruising or swelling to his ribs or abdomen.

§ 87(2)(b)'s arrest photograph shows that Band-Aids had been applied to the abrasions on the left side of his forehead and above his eyebrow (Board Review 08). The left side of his cheek appears to show significant swelling and some bruising.

According to New York State Penal Law §35.30 and Patrol Guide Procedure 221-01, officers are allowed to use reasonable physical force when necessary to place a person in custody or to prevent escape from custody (Board Review 09) (Board Review 10).

§ 87(2)(g)  
[REDACTED]

**Allegation D – Force – Outside of § 87(2)(b) in Queens, Police Officer Charles Volante used physical force against § 87(2)(b)**

**Allegation E - Force – Outside of § 87(2)(b) in Queens, Police Officer Valerie Shepherd used physical force against § 87(2)(b)**

**Allegation F – Force – Outside of § 87(2)(b) in Queens, Police Officer Valerie Shepherd used physical force against § 87(2)(b)**

**Allegation G – Force – Outside of § 87(2)(b) in Queens, Police Officer Charles Volante used physical force against § 87(2)(b)**

**Allegation H – Force – Outside of § 87(2)(b) in Queens, an officer struck § 87(2)(b) with a radio.**

It is undisputed that after Police Officers Shepherd and Volante pulled § 87(2)(b) out of the basement, Police Officer Volante tripped him and swung him to the ground. It is undisputed that the officers attempted to place § 87(2)(b) in handcuffs. Officers held § 87(2)(b) who was wearing only shorts and sandals, on the ground, and he moved, or was moved, “back and forth” on the concrete. Police Officer Volante called for backup, but § 87(2)(b) was handcuffed before other officers arrived at the scene. § 87(2)(g)

§ 87(2)(b) stated that he was dragged on the concrete once outside. He was repeatedly asked how and from where he was dragged, and he repeatedly responded that he was not sure. § 87(2)(b)

§ 87(2)(b) stated that he had “no idea what was going on” and that he was not attempting to get away from the officers. When he was asked what he was doing while he was dragged and he replied, “There was nothing I could do.” He alleged that Police Officers Shepherd and Volante repeatedly struck him in the head, and that Police Officer Shepherd repeatedly kicked him in the ribs. He was struck in the back of the head with what he believed to be a radio “a couple” of times by an officer he could not see. He estimated this went on for between five and ten minutes.

The officers were consistent in stating that after he was pulled out of the basement and swung to the ground, § 87(2)(b) braced his arms in a “push-up” position and “actively resist[ed]” by not providing his hands. § 87(2)(b) managed to push off of the ground to his feet, and was taken to the ground again. Police Officer Volante stated that § 87(2)(b) was “rubbing his body back and forth” by twisting and moving. Police Officer Shepherd described § 87(2)(b) as “fighting” while on the ground, and stated that both officers repeatedly told him to provide his arms. Both officers stated that § 87(2)(b) repeatedly told them that he was providing his hands, but was not providing them and was instead attempting to “get away.” He attempted to avoid being handcuffed by kicking his legs, moving his body, and shaking his arms. The officers believed that this struggle on the ground is what caused § 87(2)(b)'s abrasions. After § 87(2)(b) was taken to the ground a second time, he was handcuffed. Police Officer Volante stated that an officer “may have” placed their knee on § 87(2)(b)'s head to prevent escape while he was being handcuffed. Both officers denied punching or kicking § 87(2)(b) or seeing their partner do so once they were outside. They both denied striking him with a radio or striking him in the back of the head with any objects. Police Officer Volante added that the “unreasonableness” of § 87(2)(b)'s behavior led him to believe that he might have been “on something.”

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]



**Allegation J – Abuse of Authority – Outside of § 87(2)(b) in Queens, Police Officer Charles Volante failed to provide his name to § 87(2)(b)**  
**Allegation I – Abuse of Authority – Outside of § 87(2)(b) in Queens, Police Officer Valerie Shepherd failed to provide her name to § 87(2)(b)**

§ 87(2)(b) alleged that during his struggle with the officers, he asked both Police Officer Volante and Police Officer Shepherd for their names, and that they did not answer him. He stated that at the precinct stationhouse, he observed their name placards. He provided their names to the CCRB as “Bernard” and “Volante.”

Police Officers Shepherd and Volante both stated that when § 87(2)(b) requested their respective names, they verbally provided them immediately.

§ 87(2)(g)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

---

Squad: 2

Investigator: \_\_\_\_\_  
Signature Print Date

Squad Leader: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date